

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

CARMEN ACOSTA SANCHEZ,

Plaintiff,

v.

**PUERTO RICO POLICE DEPARTMENT,
et al.**

Defendant.

CIVIL NO. 13-1947 (PAD)

MEMORANDUM AND ORDER

Delgado-Hernández, District Judge.

Before the court are (i) the “Motion for Summary Judgment” filed by Puerto Rico Police Department, James Tuller, Hector Pesquera, and Juan Carlos Centeno (Docket No. 76), which plaintiff opposed (Docket No. 86); and (ii) their “Motion to Strike Plaintiff’s Opposing Statement of Facts” (Docket No. 92). The motions were referred to U.S. Magistrate Camille L. Vélez-Rivé, who issued a Report and Recommendation (“R&R”) (Docket No. 115) granting in part and denying in part defendants’ request.

In particular, the U.S. Magistrate Judge recommended that defendants’ request to dismiss (i) plaintiff’s Title VII claims against the PRPD under Eleventh Amendment immunity be DENIED (id. at pp.11-13); (ii) plaintiff’s equal pay claims be DENIED (id. at pp. 13-14); (iii) plaintiff’s Title VII and ADEA claims against the PRPD be DENIED (id. at pp. 15-19); (iv) plaintiff’s Title VII and ADEA claims against defendants Centeno, Tuller and Pesquera in their individual capacities be GRANTED (id. at p. 19); (v) plaintiff’s Law 100 claims against Centeno and Tuller be GRANTED (id. at p. 20); (vi) plaintiff’s Law 100 claims against Pesquera be denied;

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and (vii) plaintiff's claims under article 1802 be GRANTED. Id. at p. 24. The R&R finally recommends that defendants' motion to strike be DENIED. Id.

Defendants object to the R&R because (i) Law 100 was not included in the complaint (Docket No. 117 at p. 2); and (ii) in the alternative, the statute does not apply to PRPD or any of the defendants in their official and individual capacities. Id. at pp. 1, 3-4. A careful reading of the complaint confirms that it does not include a cause of action under Law 100. Similarly, the statute does not apply to individuals employed by entities like the PRPD, which are not covered by the statute, as this would expand the scope of Law 100 contrary to the legislative intent of protecting employees in the private sector (or employees working in governmental agencies or instrumentalities that operate as private businesses or enterprises). See, Sanoget-Valentin v. Municipal Government of Mayagüez, 2017 WL 456462, *3 (D.P.R. February 2, 2017)(so noting).

On this reading, the court cannot adopt the portion of the R&R pertaining to Law 100. Otherwise, having made an independent, *de novo*, examination of the entire record, the magistrate judge's findings are well supported in the record and the law. For the same reason, the court hereby ADOPTS IN PART AND REJECTS IN PART the magistrate judge's report as stated herein, and, accordingly, GRANTS IN PART AND DENIES IN PART defendant's motion for summary judgment. Defendants' motion to strike is DENIED. An Order for the parties to submit a Joint Proposed Pretrial Order will follow.

SO ORDERED.

In San Juan, Puerto Rico, this 3rd day of March, 2017.

s/Pedro A. Delgado-Hernández
PEDRO A. DELGADO-HERNÁNDEZ
United States District Judge